

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOHN V. APOLLO,

Plaintiff,

No. CIV S-98-1493 LKK CMK P

vs.

COUNTY OF SACRAMENTO, et al.,

Defendants.

FINDINGS AND RECOMMENDATIONS

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Plaintiff is a state prisoner proceeding pro se with a civil rights action pursuant to 42 U.S.C. § 1983. Presently before the court is plaintiff's motion to vacate, filed April 18, 2005, defendant's response, filed May 2, 2005, and plaintiff's rebuttal to response to motion to vacate, filed May 20, 2005. The court entered judgment in favor of defendants on March 31, 2005. Moreover, the court may vacate judgment pursuant to Fed. R. Civ. P. 60(b).

In his motion to vacate judgment, plaintiff contends that his objections to this court's findings and recommendations were timely. Plaintiff argues that the twenty-day time limit proscribed by the court means twenty court days, not calendar days.

Local Rule 6-136(d) states "when a court order omits to specify whether the days prescribed or allowed are court or calendar days, then the provisions of Fed. R. Civ. P. 6(a)...shall control to determine the calculation of the days prescribed or allowed." Rule 6(a) uses calendar


1 days when the period of time proscribed is eleven days or more. See Fed. R. Civ. P. 6(a).

2 Here, as previously stated, the court granted the parties twenty days to file
3 objections to its findings and recommendations filed February 11, 2005. Therefore, because the
4 court granted twenty days and not some number less than eleven, the time limit is calculated by
5 counting calendar days.

6 Plaintiff asserts that he received the findings and recommendations on February
7 17, 2005. Twenty days after February 17, 2005, is March 9, 2005. However, plaintiff alleged
8 that he mailed his objections on March 16, 2005, but the court did not receive them until March
9 21, 2005. (See Court Docket.) Therefore, plaintiff's objections were untimely and properly
10 disregarded.

11 Accordingly, IT IS HEREBY RECOMMENDED that plaintiff's motion to vacate
12 filed April 18, 2005, be denied.

13 DATED: May 26, 2005.

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16 **CRAIG M. KELLISON**
17 UNITED STATES MAGISTRATE JUDGE
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